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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/298,245	04/23/99	CHEN	J 13246.0007

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HM22/1105

EXAMINER
CHANNAVAJJALA, L

ART UNIT	PAPER NUMBER
1615	12

DATE MAILED: 11/05/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/298,245	CHEN, JAU-FEI
	Examiner	Art Unit
	Lakshmi S. Channavajjala	1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 August 2001.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) 10-12, 24-26, 29 and 30 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9, 13-23, 27 and 28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                            4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                            5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                            6) Other: \_\_\_\_\_

## **DETAILED ACTION**

Receipt of extension of time and amendment B, dated 8-17-01 is acknowledged.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-9, 13-23 and 27-30 have been considered but are moot in view of the new ground(s) of rejection.

Examiner notes that claims 29 and 30 are directed to dental products and accordingly, grouped them with claims 12, 25 and 26. Since, claims 25 and 26 are withdrawn from consideration as non-elected species, claims 29 and 30 (grouped with claims 12, 25 and 26) are also withdrawn from consideration as non-elected species.

Currently claims 1-9, 13-23, 27 and 28 are considered for examination.

### ***Claim Rejections - 35 USC § 102***

1. Claim 1 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 2703189 (DE '189).

DE '189 discloses a skin cream containing the fruit juice of cactus. The reference states that all the other components of the skin cream are of natural origin, which reads on the instant natural skin supplement. The ability to deliver vitamins to the skin and promote wound healing is inherent to the cactus fruit juice. Thus, DE '189 anticipates claims 1 and 27.

### ***Claim Rejections - 35 USC § 103***

2. Claims 1-3, 6-9 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2703189 (DE '189).

DE '189 discloses a skin cream composition for treating skin wrinkles, especially in the facial and neck region. The composition contains cactus fruit juice and other ingredients of natural origin. DE 189 does not explicitly state the body wash or bar soap or mask composition, as in the instant claims. However, anti-wrinkle compositions prepared in several forms such as gels, creams, lotions, cleansers, mask, moisturizing soaps etc. are very well known in cosmetic art. Accordingly, preparing the anti-wrinkle composition of DE '189, in the form of a mask or cleanser or soap, without losing the anti-wrinkling effect of cactus fruit extract, would have been within the scope of a skilled artisan.

3. Claims 1-9, 13-23, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2703189 (DE '189) and US 5,578,312 to Parrinello in view of DE 2732749 (DE '749) and CN 1033278 (CN '278).

DE discloses a cosmetic cream containing cactus fruit juice (extract) and other natural ingredients. DE '189 fails to teach one specific type of extract, such as ginseng root or berry extract of the instant claims.

Parrinello teaches a skin care system for moisture retention in skin comprising a composition made from a mixture of dried herbs, leaves, fruits, roots, juices, flowers etc., from plants along with other surfactants, emulsifiers, preservatives etc. Parrinello teaches a number of cosmetic forms such as gel, lotion, mask, cleansers etc (col. 2, lines 7-16 and examples). Among other herbal/plant extracts, Parrinello teaches ginseng extract in a moisturizer, mask, cleanser (see examples) etc. Parrinello does not teach cactus fruit extract. However, it would have been obvious for a skilled artisan at the time of the instant invention to add the cactus fruit

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juice of DE '189 to the skin moisturizing composition of Parrinello containing several plant/herbal extracts, including ginseng, because, DE '189 teaches cactus fruit juice is effective for skin wrinkles and can be combined with other natural ingredients and Parrinello also teaches all natural extracts for moisturizing skin and removing wrinkles. The "comprising" language of the instant claims does not exclude the presence of various other extracts of Parrinello.

Parrinello does not teach ginseng berry or root or even specify the type of ginseng extract. However, choosing a suitable type of extract (of ginseng) without sacrificing the moisturizing effect of the extract would have been within the scope of a skilled artisan because the prior art teaches the moisturizing effect in ginseng extract.

However, DE 2732749 and CN '278 teach triterpenes are present in ginseng root and ginseng fruit respectively. Thus, the active component, triterpene, is present in both roots and fruit of ginseng. Accordingly, it would have been obvious for a skilled artisan at the time of the instant invention to use either ginseng root (CN '278) or ginseng fruit (DE '749) in the composition of Parrinello and still expect the same anti-wrinkle and skin moisturizing activity of the composition. Further, absent showing evidence on the contrary, the skin moisturizing and wound healing properties are implicit to the cactus extract of DE '199.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 703-308-2438. The examiner can normally be reached on 7.30 AM -4.00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7921 for regular communications and 703-308-7921 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
Lakshmi Channavajjala  
November 2, 2001

THURMAN K. PAGE  
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